

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JOSEPH E. ROGERS,

Plaintiff,

Case No. 23-cv-1072-pp

v.

KILOLO KIJAKAZI,

Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO PROCEED
WITHOUT PREPAYING FILING FEE (DKT. NO. 3)**

The plaintiff has filed a complaint seeking judicial review of a final administrative decision denying his claim for disability insurance benefits under the Social Security Act. Dkt. No. 1. He also filed a motion for leave to proceed without prepaying the filing fee. Dkt. No. 3.

To allow the plaintiff to proceed without paying the filing fee, the court first must decide whether the plaintiff can pay the fee; if not, it must determine whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and 1915(e)(2)(B)(i).

Based on the facts in the plaintiff's affidavit, the court concludes that he does not have the ability to pay the filing fee. The plaintiff indicates that he is employed and he is married but his spouse is not employed. Dkt. No. 3 at 1. The plaintiff has two dependents he is responsible for supporting, a 17-year-old daughter and a 7-month-old daughter; he provides \$385 per month in support for each of the children. Id. The plaintiff earns \$2,080 per month from his

employment at Running, Inc. in Viroqua, Wisconsin and he has received \$3,372 (approximately \$281 per month) in food assistance in the past twelve months. Id. at 2. The plaintiff's monthly expenses total \$2,765 (\$795 rent, \$400 car payments, \$770 child support, \$800 other household expenses). Id. at 2-3. The plaintiff owns a 2005 Kia Alanti, worth approximately \$1,400; he does not own his home or any other property of value; and he has no cash on hand or in a checking or savings account. Id. at 3-4. The plaintiff has demonstrated that he cannot pay the \$350 filing fee and \$52 administrative fee.

The next step is to determine whether the case is frivolous. A case is frivolous if there is no arguable basis for relief either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992) (quoting Nietzke v. Williams, 490 U.S. 319, 325 (1989); Casteel v. Pieschek, 3 F.3d 1050, 1056 (7th Cir. 1993)). A person may obtain district court review of a final decision of the Commissioner of Social Security. 42 U.S.C. §405(g). The district court must uphold the Commissioner's final decision as long as the Commissioner used the correct legal standards and the decision is supported by substantial evidence. See Roddy v. Astrue, 705 F.3d 631, 636 (7th Cir. 2013).

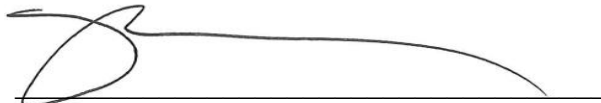
The plaintiff's complaint indicates that he was denied benefits "initially, on reconsideration, and following a hearing in front of an Administrative Law Judge" and that the Appeals Council concluded that there was no basis to grant the plaintiff a review of the ALJ's decision. Dkt. No. 1 at 1. The plaintiff states that the decision of the Commissioner finding the plaintiff not disabled

and denying benefits is “not in accordance with the purpose and intent of the Social Security Act, nor is it in accordance with the evidence, but contrary thereto, in that the ALJ’s decision is not supported by substantial evidence and is contrary to law.” Id. at 2. At this early stage in the case, and based on the information in the plaintiff’s complaint, the court concludes that there may be a basis in law or in fact for the plaintiff’s appeal of the Commissioner’s decision, and that the appeal may have merit, as defined by 28 U.S.C. §1915(e)(2)(B)(i).

The court **GRANTS** the plaintiff’s motion for leave to proceed without prepaying the filing fee. Dkt. No. 3.

Dated in Milwaukee, Wisconsin this 17th day of August, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'P. Pepper', is written over a horizontal line.

HON. PAMELA PEPPER
Chief United States District Judge